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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,369	06/19/2001	Istvan Szabo	2466-97	1073

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EXAMINER
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LEVITAN, DMITRY

ART UNIT	PAPER NUMBER
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2662

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/883,369

Applicant(s)

SZABO, ISTVAN

Examiner

Dmitry Levitan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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Amendment, filed 12/22/05, has been entered. Claims 1-21 remain pending.

***Claim Objections***

In light of Applicant's amendment the objection to the claims 1-14, 19 and 20 has been withdrawn.

***Claim Rejections - 35 USC § 112***

1. In light of Applicant's amendment claim 4, 11 and 18 rejection under the second paragraph of 35 U.S.C. 112 has been withdrawn.

***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 15-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Computer program is not directed to a process, machine, manufacture or composition of matter. (See MPEP 2106).

***Claim Rejections - 35 USC § 103***

3. Claims 1-4, 8-11 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wan (US 6,529,475).

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Wan teaches a method, a system and computer program product of determining whether to accept an incoming IP telephone call over IP network (real time VoIP network on Fig. 1 and 2, compatible with H.323 standard including Internet and VoIP 2:17-48), comprising:

- a. Receiving an incoming call at an IP telephony gateway (inherently part of gateways 108, shown on Fig. 1 and 2, connected to IP calls originating terminals 104, wherein the calls are directed to a gatekeeper 100 2:35-57),
- b. Reading at least one current performance indicator value provided by the monitoring mechanism for monitoring the performance quality of plurality of ongoing calls for a number of lost packets at central server (reading the congestion information at server 112 on Fig. 2, received from monitors 110 8:21-37, monitoring a plurality of ongoing calls 8:8-12, wherein the RTCP packets are monitored for packet loss rate 8:12-20, as an current performance indicator value indicating a number of lost packets), and
- c. Determining at central server if the incoming call is to be accepted or rejected based on the read at least one performance indicator value (inherently part of the system, because gatekeepers are responsible for the new calls admission 2:49-63 and call admission control is recommended for VoIP calls based on the results of the congestion analysis 6:45-7:11).

Wan also teaches distributing the functionality of the central server to the gatekeepers (8:58-65).

Wan does not teach combining IP telephony gateways with respective gatekeepers with distributed central server functionality.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine IP telephony gateways with respective gatekeepers with distributed

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central server functionality of Wan to save cost, as the combination of two units sharing some components costs less than two separate units.

In addition, regarding claim 8, Wan teaches means for receiving an incoming call (inherently a portion of gateway 108, because receiving incoming calls is essential for the system operation, Fig. 1 and 2:40-57), means for reading indicator value (inherently portion of server 112, because reading the results from monitors 111 is essential for the system operation 8:30-33) and means for determining to admit the call (inherently a portion of server 112, because server 112 determines to admit or reject a new call 8:45-55).

In addition, regarding claim 15, Wan teaches an output signal indicating the result of admission determining (a signal from server 112 to the gatekeepers 100 shown as step 206 on Fig. 3 and 8:45-55).

4. Claims 5-7, 12-14 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wan in view of Grabelsky (US 6,678,250).

Wan substantially teaches the limitations of the claims (see the rejection above), including determining the incoming call admission based on the network performance and utilizing thresholds for the bandwidth management 2:57-62).

Wan does not teach determining the network performance, based on comparing the indicator value with a threshold and forming a function on at least one indicator value and compare it with predetermined threshold.

Grabelsky teaches determining the network performance, based on comparing the indicator value with a threshold (comparing performance parameters like packet loss, round trip

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delay and jitter with alarm thresholds and determining the network performance based on the comparison result by generating or not generating an alarm as shown on Fig. 6, steps 150 and 152 and 13:17-25) and forming a function on at least one indicator value and compare it with predetermined threshold (determining the round trip delay 8:7-23 and comparing the result with a threshold 13:17-25).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add determining the network performance, based on comparing the indicator value with a threshold and forming a function on at least one indicator value and compare it with predetermined threshold of Grabelsky to the system of Wan to improve the system call admission by using the comparison of monitored parameters with the predetermined thresholds making the determination of the network performance measurable and consistent.

### *Response to Arguments*

5. Applicant's arguments with respect to claims 1-4, 8-11 and 15-18 have been considered but are moot in view of the new ground(s) of rejection.

6. Regarding claim 2, Applicant argues that Wan does not teach performance indicators provided by RTCP.

Examiner respectfully disagrees.

Wan teaches using RTCP packets to derive performance indicators like the packet loss rate, etc (8:12-16).

7. Regarding claim 4, Applicant argues that Wan does not teach an indicator to indicate the difference between packet spacing.

Examiner respectfully disagrees.

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Applicants arguments are irrelevant, as claim 4 limitation requires “at least one” of two indicators, related to packets loss or jitter, and Wan teaches performance indicator to indicate the packet loss 8:12-16.

8. Regarding Applicant’s arguments on the claims 15-21 rejection as non statutory, Examiner believes that the following quotation of MPEP §2106 will explain his position: “Since a computer program is merely a set of instructions capable of being executed by a computer, the computer program itself is not a process and Office personnel should treat a claim for a computer program, without the computer-readable medium needed to realize the computer program’s functionality, as nonstatutory functional descriptive material.”

### *Conclusion*

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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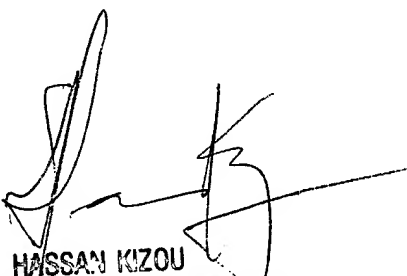
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dmitry Levitan whose telephone number is (571) 272-3093. The examiner can normally be reached on 8:30 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou can be reached on (571) 272-3088. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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1/06/06.



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